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11 **UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 **CENTER FOR BIOLOGICAL DIVERSITY**  
14 *et al.,*

15 Plaintiffs,

16 v.

17 ANDREW R. WHEELER, in his official  
18 capacity as Administrator of the United States  
Environmental Protection Agency,  
19

20 Defendant.

Case No. 3:20-cv-00448-VC

**JOINT MOTION TO ENTER CONSENT  
DECREE**

1 Defendant Andrew R. Wheeler, in his official capacity as the Administrator of the United  
 2 States Environmental Protection Agency (“EPA”), and Plaintiffs Center for Biological Diversity  
 3 and Center for Environmental Health (collectively, “Plaintiffs”), by and through the undersigned  
 4 counsel, hereby jointly move the Court to enter the attached Consent Decree (attached as Exhibit  
 5 A). In support of this motion, the Plaintiffs and EPA (collectively, the “Parties”) state as  
 6 follows:

7 1. Plaintiffs’ First Amended Complaint (Dkt. No. 13) alleges that EPA has failed to  
 8 undertake certain non-discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-  
 9 7671q, and that such alleged failures are actionable under CAA section 304(a)(2) of the CAA,  
 10 42 U.S.C. § 7604(a)(2).

11 2. In Claim 1, Plaintiffs allege that EPA has failed to make a finding of failure to  
 12 submit a state implementation plan (“SIP”) or SIP revision implementing reasonably available  
 13 control technology (“RACT”) for volatile organic compounds sources covered by the control  
 14 techniques guideline (“CTG”) document entitled Control Techniques Guidelines for the Oil and  
 15 Natural Gas Industry (EPA 453/B-16-001), *Notice*, 81 Fed. Reg. 74,798 (Oct. 27, 2016) (the “Oil  
 16 and Gas RACT CTG”) pursuant to 42 U.S.C. § 7410(k)(1)(B) for the 2008 ozone National  
 17 Ambient Air Quality Standards (“NAAQS”) for the states and areas listed in Table 1 of the First  
 18 Amended Complaint within six months after the due date, i.e. by April 27, 2019, First Am.  
 19 Compl. ¶¶ 1, 41.

20 3. EPA has received SIP submissions addressing the Oil and Gas RACT CTG for  
 21 the Maine listing, the Mariposa County and Antelope Valley listings in California, both  
 22 Maryland listings, the Pinal County listing in Arizona, and all three Wisconsin listings in Table 1  
 23 of the First Amended Complaint and has deemed those submissions complete. Claim 1 is  
 24 therefore moot as to the following listings in Table 1 of the First Amended Complaint:

<u>State</u>	<u>Nonattainment Area or Ozone Transport Region (“OTR”)</u>
Arizona	Phoenix-Mesa, AZ nonattainment area (Pinal County (part) portion)
California	Los Angeles-San Bernardino Counties (West Mojave Desert), CA nonattainment area (Antelope Valley portion)

<u>State</u>	<u>Nonattainment Area or Ozone Transport Region (“OTR”)</u>
California	Mariposa County, CA nonattainment area
Maine	OTR (Maine portion)
Maryland	Baltimore, MD nonattainment area
Maryland	OTR (Maryland portion)
Wisconsin	Chicago-Naperville nonattainment area
Wisconsin	Inland Sheboygan County nonattainment area
Wisconsin	Shoreline Sheboygan County nonattainment area

4. In Claim 2, Plaintiffs allege that EPA has failed to perform a duty mandated by CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), to take final action to approve or disapprove, in whole or in part, Oil and Gas RACT CTG SIPs for the 2008 and/or 2015 ozone NAAQS submitted by various states for the nonattainment areas and OTR states listed in Tables 2 and 3 of the First Amended Complaint, First Am. Compl. ¶¶ 2, 3, 49;

5. On July 27, 2020, EPA took final action on a SIP revision submitted by the Commonwealth of Massachusetts approving Massachusetts’ determination that there are no facilities in the Commonwealth subject to the Oil and Gas RACT CTG. *Final Rule*, 85 Fed. Reg. 51,666 (Aug. 21, 2020). Claim 2 is therefore moot as to the Massachusetts portion of the ozone transport region for the 2008 ozone NAAQS, *see Final Rule*, 73 Fed. Reg. 16,436 (Mar. 27, 2008), and the 2015 ozone NAAQS, *see Final Rule*, 80 Fed. Reg. 65,292 (Oct. 26, 2015).

6. The Parties reached agreement on a proposed Consent Decree resolving all claims in August 2020. Section 113(g) of the CAA, 42 U.S.C. § 7413(g), requires EPA to provide “a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing” upon the proposed Consent Decree. The proposed Consent Decree was noticed in the *Federal Register* on August 21, 2020. *Notice*, 85 Fed. Reg. 51,698 (Aug. 21, 2020). That notice and comment process is now complete. EPA received no comments disclosing facts or considerations that indicate that the Department of Justice or EPA should withhold consent.

7. The Parties jointly request that the Court enter the proposed Consent Decree.

1           8. Through the Consent Decree, EPA and Plaintiffs indicate their agreement that the  
2 Consent Decree is fair, reasonable, and in the public interest. The Court should therefore enter  
3 the attached Consent Decree.

4           WHEREFORE, the Parties respectfully move the Court to enter the attached Consent  
5 Decree.

6  
7 Respectfully submitted,

8 Date: October 9, 2020

/s/ Robert Ukeiley (email authorization 10/8/20)

ROBERT UKEILEY, Admitted *Pro Hac Vice*

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*Counsel for Plaintiffs*

1 Date: October 9, 2020

2  
3 /s/ Leslie M. Hill

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18 U.S. Environmental Protection Agency  
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**[PROPOSED] ORDER**

Before the Court is the parties' Joint Motion to Enter the Consent Decree. The Court finds the proposed consent decree to be fair, reasonable, and in the public interest. Therefore, the Joint Motion is **GRANTED**.

**IT IS SO ORDERED.**

Dated:

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VINCE CHHABRIA  
United States District Judge